BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION JUN 12 1996

Washington, DC 20554

In the Matter of	)	
	)	
Allocation of Costs Associated With Local Exchange Carrier Provision of Video Programming Services	))))	CC Docket No. 96-112
		DOCKET FILE COPY ORIGINAL

To: The Commission

REPLY COMMENTS OF TIME WARNER CABLE

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SUMMARY OF REPLY COMMENTS OF TIME WARNER CABLE

In its reply comments, Time Warner Cable ("TWC") addresses two basic issues. First, it responds to LEC arguments that price cap regulation obviates the need for cost allocation rules. TWC contends that price cap regulation does not eliminate the need for the cost allocation rules at issue in this proceeding. TWC notes particularly that the productivity factor in the price cap formula does not eliminate the need for a specific allocation methodology for LEC provision of video and other nonregulated services using common plant. Secondly, TWC points out that cost allocation for cable television companies is not at issue in this proceeding, and involves issues different from those being addressed in this proceeding.

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Time Warner Cable ("TWC"), a division of Time Warner Entertainment Company, L.P., by its attorneys, hereby submits its reply to the comments filed in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.

INTRODUCTION

As could be expected, the parties to this proceeding divided along industry lines, with the local exchange telephone companies on one side and consumers and competitors of the telephone companies on the other side. The notice framed the pertinent issues and, as TWC indicated in its opening comments, tentatively proposed the correct resolution of most of those issues.

TWC files this reply to focus narrowly on two sets of arguments advanced by some of the local exchange telephone companies. First, some LECs argue that cost allocation rules are unnecessary for telephone companies subject to price-cap regulation of their rates. The Commission anticipated that argument in the Notice (at ¶ 61). Second, some LECs argue that the cost allocation rules adopted in this proceeding should be applied to cable television companies that engage in telephony. That self-serving effort to equate apples with oranges should be rejected.

ARGUMENT

I. PRICE CAP REGULATION OF TELEPHONE SERVICE DOES NOT ELIMINATE THE NEED FOR EFFECTIVE COST ALLOCATION RULES FOR LOCAL EXCHANGE COMPANIES ENGAGED IN VIDEO SERVICES.

The LECs generally argue that the price cap mechanism in place for interstate rates obviates cross-subsidy concerns.[1] The primary basis asserted for this argument is that carriers that elect the highest interim productivity factor have no sharing obligations and, therefore, no issue of cost misallocation can arise. However, as the Commission observed in the Notice (at ¶ 61), the productivity factor/sharing election is annual, not permanent. Consequently, at least so long as there exists the opportunity for price cap carriers to elect sharing, and for periodic reviews of price cap indices and outcomes more generally, cost allocation rules are needed.

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1 *See, e.g.,* Comments of Ameritech at 5; Bell Atlantic Comments at 1; Comments of BellSouth Corporation and BellSouth Telecommunications, Inc. at 4; Comments of Pacific Bell and Nevada Bell at 3.

Several LECs argue that the ratepayer interest in benefiting from the scope economies made possible by common use of plant by regulated and nonregulated services is fully satisfied by the productivity factor in the price cap formula.[2] However, the productivity factor in the price cap formula is designed to reflect only the expected benefits of more efficient provision of telephone service on a stand-alone basis. It was not designed to reflect the additional scope economies that are claimed to be inherent in telephone company provision of regulated and nonregulated voice and video services over an integrated network. A cost allocation methodology structured so as to make an intentional and substantial allocation of costs away from regulated and onto nonregulated services is needed to give regulated telephone ratepayers the benefit of scope economies to which they are entitled.

II. COST ALLOCATION BY CABLE COMPANIES IS NOT AT ISSUE IN THIS PROCEEDING.

It is plain from the Notice that the question of cost allocation by cable television companies is not at issue in this proceeding. Any effort to address that issue here would therefore be improper and unlawful.

Nonetheless, several telephone companies asserted in their comments that the Commission should adopt rules in this proceeding addressing cost allocation by cable television

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2 *See, e.g.,* Bell Atlantic Comments at 5.

companies.[3] The what's-good-for-the-goose-is-good-for-the-gander premise urged in support of those assertions is transparently wrong. Cost allocation is a process informed heavily by policy considerations, and the policy considerations inherent in telephone company construction of broadband facilities to offer video and other nonregulated services are very different from those presented by cable television company use of existing and modified broadband networks to provide telephony. For example, most cable companies have never been, and are not now, subject to rate-of-return regulation and have not built up their infrastructures with the aid of the legal protections associated with such regulation. Indeed, section 621(c) of the Communications Act, 47 U.S.C. § 541(c), specifically forbids common carrier regulation of cable television companies. Furthermore, cable television companies face far more competition than is faced -- and, in the foreseeable future, will be faced -- by telephone companies. For these and many other reasons, the issues for the two kinds of entities are different and there is no symmetry that could justify a uniform set of rules for both cable television companies and telephone companies.

CONCLUSION

The local exchange telephone companies stand conspicuously alone in their opposition to the measures proposed in the Notice.

3 *See, e.g.,* Comments of The Southern New England Telephone Company at 22-4; Bell Atlantic Comments at 8 n.22.

TWC respectfully urges the Commission to follow through on the proposals advanced in the Notice, and to adopt a fixed-factor allocation method that allocates no more than 25 percent of common costs to regulated services.

Respectfully submitted,

TIME WARNER CABLE

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